

2010

# Reconceptualizing Restorative Justice

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## Recommended Citation

Kate Bloch, *Reconceptualizing Restorative Justice*, 7 *Hastings Race & Poverty L.J.* 201 (2010).

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**Author:** Kate Bloch

**Source:** Hastings Race & Poverty Law Journal

**Citation:** 7 HASTINGS RACE & POVERTY L.J. 201 (2010).

**Title:** *Reconceptualizing Restorative Justice*

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# Reconceptualizing Restorative Justice

KATE E. BLOCH\*

## Introduction

Imagine yourself seated in a darkened theater at the start of a performance. The heavy velvet curtain rises. A single spotlight illuminates a circle in the center of the stage. Your attention is riveted on the story unfolding within the circumference of that pool of light. Contemporary traditional California courts have commonly used a similar spotlight approach to assess offender sentences in criminal cases.<sup>1</sup> With limited resources, and operating for many years within the constraints of California's heavy emphasis on retributive sentencing,<sup>2</sup> courts generally focused primarily on the following criteria: the current offense, any allegation of parole or probation violation, the offender's criminal history, the offender's remorse and/or plea, and local and prescribed sentencing practices.<sup>3</sup>

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\* Kate E. Bloch, Professor of Law, University of California, Hastings College of the Law. I especially want to thank Sunny Schwartz, developer of Resolve to Stop the Violence Project, for introducing me to her program, and for her and Professor Jennifer Gerarda Brown's invaluable feedback on this article. I am grateful also for Amanda Tylicki's excellent research assistance.

1. See HOWARD ZEHR, CHANGING LENS: A NEW FOCUS FOR CRIME AND JUSTICE 178 (1990) (using a photographic camera lens metaphor in arguing for a focus on restorative justice and noting that "[t]he lens we look through determines how we frame both the problem and the 'solution.'").

2. CAL. PEN. CODE § 1170(a)(1) (West 2009) ("The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion."). The California Penal Code also provides, however, that the "Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders." § 1170(a)(2).

3. By statute, victims also have a right to be heard by the sentencing court. See CAL. CONST. ART. I § 28(b)(8). Victim statements and input have sometimes also played a role in sentences.

It is with this approach that California's prisons have grown to their current overwhelmed capacity.<sup>4</sup>

Now imagine that the floodlights fade in and the entire stage is illuminated. You become aware of other parts and participants in the story, parts and participants who had been present on the stage but largely or perhaps entirely hidden from view. Restorative justice, unlike contemporary traditional California court approaches, seeks a more contextual approach to crime and dispute resolution. In the realm of the California Correctional Crisis Conference, along with community courts and advances in neuroscience for drug addiction prevention and treatment, restorative justice furnishes another option and perspective on sentencing. In this essay, I explore the restorative justice option, first in what I call its "classic" form, then as an evolving "hybrid" paradigm, one which combines restorative justice, traditional sentencing, and an emphasis on rehabilitative programming.

Restorative justice can take place at any phase of the criminal justice process.<sup>5</sup> But, in order to better understand the differing roles that restorative justice may play in the criminal justice system, I distinguish two restorative justice paradigms. I define Classic Restorative Justice ("Classic RJ") as a form of restorative justice that functions primarily as a substitute for or as part of the criminal justice sentencing process. In contrast, I call the form of restorative justice that operates in correctional institutions separate from the court sentencing process, Hybrid Restorative Justice ("Hybrid RJ"). The essay compares the two paradigms. Do the benefits and criticisms of the classic form apply to the hybrid form? Can either serve to shrink recidivism rates and address, at least in part, the California correctional crisis?

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4. For a discussion of the current overcrowding crisis, see Kate E. Bloch, *Changing the Topography of Sentencing*, 7 HASTINGS RACE & POVERTY L. J. (this issue, Winter 2010); Hadar Aviram, *Defining the Problem*, 7 HASTINGS RACE & POVERTY L. J. (this issue, Winter 2010). More recently, as *Changing the Topography of Sentencing* suggests, California has moved toward increasing use of specialty courts, like drug courts, which do look beyond the traditional spotlight focus for the motivational factors causing drug dependence. Bloch, 7 HASTINGS RACE & POVERTY L. J. (this issue, Winter 2010).

5. "Use of these processes can take place at any point in the justice process, including pre-arrest, pre-court referral, pre-sentencing, post-sentencing, and even during incarceration." Mark S. Umbreit, Betty Vos, Robert B. Coates, and Elizabeth Lightfoot, *Restorative Justice: An Empirically Grounded Movement Facing Many Opportunities and Pitfalls*, 8 CARDOZO J. CONFLICT RESOL. 511, 529 (2007). It can also occur outside of the criminal justice process entirely. See *id.*

## I. Classic Restorative Justice

Outside the usual constraints of sentencing in the criminal courtroom setting, Classic RJ generally involves gathering the offender together with those who have experienced the impact of the offense in an attempt to create bridges of understanding.<sup>6</sup> Those involved in this process, usually with the aid of a third party mediator, will try to scribe a restorative contract acceptable to all the participants. As its moniker suggests, Classic RJ focuses on restoration and repairing the harm caused by the offender, rather than on punishing the offender.<sup>7</sup> Scholars explain that “[r]estorative justice emphasizes the humanity of both offender and victim, and repair of social connections and peace as more important than retribution.”<sup>8</sup> Although the primary focus is on the victim(s) of the harm, the restorative process can also look at the broader implications of the harm caused by the offender as well as at the offender’s circumstances to consider conditions that motivated the offender’s behavior.<sup>9</sup>

Classic RJ has a venerable history and has been practiced in cultures around the globe for many centuries.<sup>10</sup> Its approaches

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6. See Jennifer Gerarda Brown, *The Use of Mediation to Resolve Criminal Cases: A Procedural Critique*, 43 EMORY L.J. 1247, 1262 (1994) (discussing the prevalence of face-to-face meetings in victim-offender mediation restorative justice programs, but noting that there are programs that do not involve a face-to-face meeting); see also, e.g., Nat’l Inst. of Justice, U.S. Dep’t of Justice, *Fundamental Concepts of Restorative Justice* (Dec. 3, 2007), <http://www.ojp.usdoj.gov/nij/topics/courts/restorative-justice/fundamental-concepts.htm> (“Face-to-face encounters are appropriate for some instances while alternative forms of exchange are more appropriate in others.”).

7. See ZEHR, *supra* note 1, at 186-87, 198-99, 209-10 (Howard Zehr does note that “[p]erhaps punishment cannot be eliminated entirely from a restorative approach . . . . If there is room for punishment in a restorative approach, its place would not be central. It would need to be applied under conditions which controlled and reduced the level of pain and in a context where restoration and healing are the goals.”).

8. Martha Minow, *Between Vengeance and Forgiveness: Feminist Responses to Violent Injustice*, 32 NEW ENG. L. REV. 967, 969 (1998) (“Forgiveness and reconciliation are central aspirations. Also elevated are the goals of healing individuals, human relationships, and even entire societies.”).

9. See ZEHR, *supra* note 1, at 200; Michael S. King, *Restorative Justice, Therapeutic Justice and the Rise of the Emotionally Intelligent Justice*, 32 MELB. U. L. REV. 1096, 1103 (2008) (“Although restorative justice sees assisting victims as a priority, many proponents also value offender and community restoration.”). See also Nat’l Inst. of Justice, *supra* note 6 (“Recognizing that offenders themselves have often been harmed, healing and integration of offenders into the community are emphasized.”).

10. See e.g., Jon’a F. Meyer, *History Repeats Itself*, 14 J. CONTEMP. CRIM. JUST. 1, 42-57 (1998); Lawrence H. Hart, *Cheyenne Way of Peace and Justice: The Post Lewis and Clark Period to Oklahoma Statehood*, 28 AM. INDIAN L. REV. 261 (2003); Restorative Justice,

include victim-offender mediation ("VOM"), group conferences, and restorative justice circles.<sup>11</sup> The classic version anticipates one or more gatherings of the actor who perpetrated the harm, the person(s) who suffered the harm, and at least one mediator or facilitator.<sup>12</sup> Commonly, in group conferences and restorative justice circles, which may be becoming more widespread in classic restorative justice, family members of the victim and of the offender and other members of the community, sometimes including law enforcement personnel, also participate.<sup>13</sup>

Classic RJ manifests through a variety of vehicles, and I offer here only an abbreviated and somewhat simplified overview. Nonetheless, several principles scaffold most Classic RJ approaches. A first principle of Classic RJ involves the offender personally recognizing the harm she caused.<sup>14</sup> This recognition anticipates a taking of responsibility for causing that harm and an acknowledgment of the scope and consequences of that harm.<sup>15</sup> The victim, or a speaker for the victim, usually describes the harm suffered.<sup>16</sup> This recounting and recognition can provide the

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Provisions Library, [http://www.provisionslibrary.org/index.php?src=gendocs&link=restorative\\_justice&category=Meridians](http://www.provisionslibrary.org/index.php?src=gendocs&link=restorative_justice&category=Meridians) (discussing the Maori approach to restorative justice) (last visited October 24, 2009); Restorative Justice Around the World, Restorative Justice Online, <http://www.restorativejustice.org/university-classroom/02world> (describing restorative justice practices around the globe). For further reading, see BEN MIKAELSEN, TOUCHING SPIRIT BEAR (2002) (a powerful novel involving a restorative justice approach to a juvenile offender).

11. See ZEHR, *supra* note 1, at 160-63 (describing victim offender reconciliation program); Marissa Wertheimer, Director, Marin Mediation Center, Presentation at the California Correctional Crisis Conference, March 20, 2009 (discussing restorative justice work at the Conference, including restorative circles). They may involve other formats, like diversionary programs. See also King, *supra* note 9, at 1102-04.

12. See ZEHR, *supra* note 1, at 160-63. See also Marissa Wertheimer, *supra* note 11. Not all programs, however, apparently require face-to-face meetings. Brown, *supra* note 6, at 1262 n.58.

13. See KIMMETT EDGAR & TIM NEWELL, RESTORATIVE JUSTICE IN PRISONS: A GUIDE TO MAKING IT HAPPEN 11-12 (2006). E-mail from Professor Jennifer Gerarda Brown to Kate E. Bloch, Professor of Law, Univ. of Cal., Hastings College of the Law (Nov. 8, 2009) (on file with author); Marissa Wertheimer, *supra* note 11.

14. Jennifer Kerrigan, "It's Not World Peace, But . . ." *Restorative Justice: Analysis of Recidivism Rates in Campbell Law School's Juvenile Justice Project*, 30 CAMPBELL L. REV. 339, 343 (2008) ("Restorative justice focuses on accountability; it emphasizes that offenders must know that there are consequences to their actions.").

15. Minow, *supra* note 8, at 967, 970 ("restorative justice tries to build on the offenders' capacities for accountability, understanding, and prevention of future offenses").

16. See e.g., Nat'l Inst. of Justice, U.S. Dep't of Justice, Victim-Offender Mediation (Dec. 5, 2007), <http://www.ojp.usdoj.gov/nij/topics/courts/restorative-justice/promising-practices/victim-offender-mediation.htm>.

springboard for the offender to express remorse and make amends.<sup>17</sup> Restorative justice aims to help offenders see (and feel) the connection between having caused harm and the punishment or consequence that ensues. This first principle of personal accountability infuses restorative justice practices.

A second and related tenet of Classic RJ is empathy. Classic RJ seeks to invoke empathy, generally in the offender,<sup>18</sup> but also sometimes in the victim of the harm and in the larger community affected by the harm.<sup>19</sup> Empathy is the bridge to restoration. A victim's description of his loss or suffering is designed to reach the offender on an emotional plane.<sup>20</sup> The offender's recounting of her motivation is designed to enable others to see through her eyes. Community or family members' accounts further enlarge the perspective and can function to create empathy bridges among the participants.<sup>21</sup>

Third, classic restorative justice predicates restoration, not as a state-imposed sanction, but rather as an agreed upon contract among the affected parties.<sup>22</sup> This shift in the perception of who suffers the harm of crime, from the government as ultimate victim and controller of redress to those involved in the harmful events as victims and as the regulators of restoration, underlies much restorative justice reasoning.<sup>23</sup> Used in this way, Classic RJ often operates as a substitute for, or as part of, more traditional court sentencing processes.<sup>24</sup> In the U.S., when it acts as a substitute,

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17. See e. g., Nat'l Inst. of Justice, *supra* note 6 ("Offenders' obligations are to make things right as much as possible.").

18. King, *supra* note 9, at 1109, citing the work of Gabrielle Maxwell and Allison Morris ("remorse comes from the offender's empathy for the victim").

19. See *supra* note 9 and accompanying text.

20. See King, *supra* note 9, at 1109.

21. "Paul McCold and Ted Wachtel have proposed that the litmus test of any restorative programme is the extent to which the work involves the three parties who are essential to restorative processes: the victim, the offender and their communities of care." EDGAR, *supra* note 13, at 15.

22. Breach of the restorative justice contract or an inability to agree on a contract may result in reversion of the case to the traditional criminal justice process.

23. For a brief summary of the pre-William the Conqueror approach to justice and the change "in the eleventh century, [when] William the Conqueror expanded the king's authority by declaring certain offenses crimes or 'breaches of the king's peace,' redressed only by action of the king's court," see Richard Delgado, *Prosecuting Violence: A Colloquy on Race, Community, and Justice*, 52 STAN. L. REV. 751, 754-55 (2000).

24. For an example of VOM as part of the conventional court sentencing procedure in the Texas courts, see Patrick Glen Drake, *Victim-Offender Mediation in Texas: When "Eye for Eye" Becomes "Eye to Eye"*, 47 S. TEX. L. REV. 647 (2006). As the author of the comment explains,

Classic RJ is usually designed to steer away from incarceration as an outcome.<sup>25</sup> When it acts as a part of more traditional court sentencing, it may influence a court in the sentence it imposes.<sup>26</sup> In some Classic RJ approaches, forgiveness by the victim of the offender is also an important component of the process. One scholar suggests, however, that “[w]here victims do forgive, it is as much for their own healing and embrace of a future without rage as it is for the benefit of the offender.”<sup>27</sup>

Although restorative justice practices date from centuries past, the formal application of restorative justice programs in connection with United States’ federal and state governmental tribunals appears to have much more recent origins. According to a national survey of victim-offender mediation programs in the United States, “[i]n the late 1970s, only a handful of VOM and reconciliation programs existed.”<sup>28</sup> Less than three decades later, over 300 programs provided restorative justice services in North America.<sup>29</sup>

Restorative justice programs, as they developed in the U.S., have tended to concentrate on juvenile cases and less serious adult offenses.<sup>30</sup> For example, a 1996-97 survey of VOM programs in the

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“While the attorneys and judge may inform the defendant that a lighter sentence may attach to her conviction for the crime committed, they must never allow their discussion to involve coercion [to participate in the VOM].” *Id.* at 661-62. The Texas procedure is “available in conjunction with or as an alternative to incarceration, for misdemeanors, minor felony offenses, and more recently, certain violent crimes.” *Id.* at 659 (footnotes omitted).

25. See e.g., Nat’l Inst. of Justice, *supra* note 6 (“Removal from the community and severe restriction of offenders is limited to the minimum necessary.”). There are, however, courts, often called therapeutic justice or sometimes community courts, which describe their practices as involving restorative justice and may sentence offenders before them to incarceration. Michael Cobden, *Beyond the Squabble: Putting the Tenderloin Community Justice Center in Context*, 7 *Hastings Race & Poverty L. J.* (this issue, Winter 2010). And some Classic RJ programs are simply a component of the traditional sentencing process, where the results of the mediation may be communicated to the judge before, or, even sometimes, after sentencing. See Brown, *supra* note 6, at 1302.

26. See Drake, *supra* note 24, at 655.

27. See Minow, *supra* note 8, at 967, 970.

28. MARK S. UMBREIT ET AL., U.S. DEP’T OF JUSTICE, CTR. FOR RESTORATIVE JUSTICE & PEACEMAKING, NATIONAL SURVEY OF VICTIM-OFFENDER MEDIATION PROGRAMS IN THE UNITED STATES 3 (2000) (“[M]ore than 1,000 programs operate throughout North America (N=315) and Europe (N=707).”).

29. *Id.* The 300-plus figure includes restorative justice programs in Canada as well as the United States. *Id.*

30. See Jean E. Greenwood & Mark S. Umbreit, *National Survey of Victim Offender Mediation Programs in the US*, VOMA CONNECTIONS, Winter 1998, at 7, available at <http://www.voma.org/docs/connect1/connect1.pdf>. The application of restorative justice practices in contemporary tribunals to juveniles first and adults more recently is also reflected in the practices in New Zealand. See Helen Bowen and Jim Boyack, Presentation at the Fourth



U.S. found that the three types of offenses most commonly referred to the responding VOM programs were “1) vandalism, 2) minor assaults, and 3) thefts.”<sup>31</sup> Of all the cases referred to the programs, sixty-seven percent were misdemeanors and thirty-three percent were felonies.<sup>32</sup> Forty-five percent of the programs worked solely with juvenile cases.<sup>33</sup> Forty-six percent worked with both juveniles and adults.<sup>34</sup> The application of classic restorative justice approaches to adults charged with or convicted of serious criminal offenses, in particular violent offenses, has been more controversial, although support for their application appears to be growing.<sup>35</sup>

Scholars and practitioners have found much to praise in restorative justice approaches, especially in their focus on empowering victims and healing.<sup>36</sup> But a fundamental question raised by critics of restorative justice, and a question especially pertinent to the correctional crisis, is whether restorative justice can actually decrease recidivism rates. For a response to this pivotal question, we turn to empirical research on restorative justice programs generally.

Researchers have conducted a substantial number of empirical studies on the effectiveness of restorative justice. In 2005, twenty-two of these studies were the subject of a meta-analysis.<sup>37</sup> These twenty-two studies, in turn, had analyzed the effectiveness of 35

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International Conference on Conferencing, Circles and other Restorative Practices, *Adult Restorative Justice in New Zealand/Aotearoa* (August 30, 2003), citing legislation that incorporates restorative justice principles in New Zealand.

31. Greenwood, *supra* note 30, at 1.

32. *Id.*

33. *Id.*

34. *Id.* Just nine percent of the programs worked solely with cases of adult offenders. *Id.*

35. Brenda V. Smith, *Battering Forgiveness and Redemption*, 11 AM. U. J. GENDER SOC. POL'Y & L. 921, 937- 942 (2003) (exploring benefits and limitations of restorative justice among other models to address domestic violence crimes); Greenwood, *supra* note 30, at 1 (reporting that the programs did mediate some percentage of cases involving more serious violent conduct — assault with bodily injury (thirty-three percent), domestic violence (eight percent), negligent homicide (eleven percent), assault with deadly weapon (eighteen percent)).

36. King, *supra* note 9, at 1121.

37. Jeff Latimer, Craig Dowden & Danielle Muise, *The Effectiveness of Restorative Justice Practices: A Meta-Analysis*, 85 THE PRISON JOURNAL 127, 135 (2005). Such a meta-analysis can provide an effective response to the challenge of evaluating the body of research, “particularly when results of primary studies conflict.” Stacy L. Young, Timothy G. Plax & Patricia Kearney, *How Does Meta-Analysis Represent Our Knowledge of Instructional Communication?*, in CLASSROOM COMMUNICATION AND INSTRUCTIONAL PROCESSES: ADVANCES THROUGH META-ANALYSIS 379 (Barbara Mac Gayle et al. eds., 2006).

separate restorative justice programs.<sup>38</sup> With respect specifically to recidivism, the authors of the meta-analysis reported that<sup>39</sup>

restorative justice programs, on average, yielded reductions in recidivism compared to nonrestorative approaches to criminal behavior. In fact, compared to the comparison and/or control groups who did not participate in a restorative justice program, offenders in the treatment groups were significantly more successful during the follow-up periods,  $t(31) = 2.88, p < .01$ .<sup>40</sup>

More generally, the authors concluded: "Despite some methodological limitations, the results provide notable support for the effectiveness of these programs in increasing offender/victim satisfaction and restitution compliance, and decreasing offender recidivism."<sup>41</sup>

Nonetheless, the meta-analysis authors also acknowledged the self-selection bias characteristic of restorative justice, namely the generally voluntary (or at least non-mandated) nature of participation in the restorative justice option, which can influence the results of studies on the effectiveness of such programs.<sup>42</sup> The concern here is that those who self-select into a restorative justice alternative may be more amenable to fulfilling the requirements of the restorative process, creating an inflated success rate.<sup>43</sup>

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38. Latimer, *supra* note 37. "The current meta-analysis provides the most comprehensive empirical synthesis of the restorative justice literature to date." *Id.* at 141. Of course, the data indicate that one or more studies reported a negative correlation or increase in recidivism while others a decrease. *Id.* at 137.

39. Possible entry points into the programs were pre-charging, post-charging, pre-sentencing, post-sentencing, and mixed. The meta-analysis, referring to the thirteen programs examined on the issue of victim satisfaction, reported that "the one negative result [on the criterion of victim satisfaction] was found in the only program that operated at the post sentence (or corrections) entry point." *Id.* at 136. There were also twenty programs listed as "mixed" with respect to entry point. *Id.* at 135. I was unable to discern from the article, apart from the one program specifically designated as having a post-sentencing entry point, which of the programs would qualify as classic and which as hybrid.

40. Latimer, *supra* note 37, at 137.

41. *Id.* at 141-42.

42. *Id.* at 139. The authors do offer suggestions about administering motivation measurement questionnaires to help researchers evaluate the effects of self-selection bias on the results. *Id.*

43. For a discussion of additional studies of restorative justice, including some that found no reduction or even an increase in recidivism, see King, *supra* note 9, at 1107-08. After discussing a number of studies, including the meta-analysis cited in the text above as well as

While Classic RJ is garnering increasing interest and support, the approach has also engendered criticism.<sup>44</sup> Among the potential disadvantages of the classic restorative justice approach, I highlight three risks here; 1) the risk of arbitrariness (lack of consistency and inequality of bargaining power), 2) the risk of maintaining or exacerbating prejudice, and 3) the risk of an aggravated toll on involved parties.<sup>45</sup>

With respect to the risk of arbitrariness, Classic RJ in the form of VOM, group conferences, and restorative circles, anticipates that the parties involved in each case will negotiate a resolution acceptable to those parties. The severity or lenity of the resulting settlement may depend substantially, if not entirely, upon the preferences of the specific victim.<sup>46</sup> Although the mediator may be an experienced one, because the approach lacks even a basic set of recommended sentencing guidelines, there is no formal check or restriction on the scope of the settlement.<sup>47</sup>

Critics argue that this approach is a recipe for inconsistent and potentially arbitrary consequences.<sup>48</sup> An offender, who caused substantial harm, but where the victim is either very forgiving or non-confrontational, may have little required of him under a restorative justice approach. An offender, who caused much more limited harm, but where the victim harbors a retributive philosophy or demands greater sacrifice, may have a much more onerous set of requirements under a restorative justice approach. Moreover, similarly situated offenders, in terms of the harm they perpetrated and perhaps other factors, may be subject to very different consequences.<sup>49</sup> Because the offender's only option, if he refuses to

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studies finding no reduction or an increase in recidivism, King concludes that "[d]espite methodological concerns, the research suggests that restorative justice produces positive outcomes for victims and offenders. However, further research should identify which cases and parties can most benefit from restorative justice processes and under what circumstances." *Id.* at 1108.

44. For a more extensive and detailed set of criticisms, involving both internal and external critiques of classic restorative justice, see Delgado, *supra* note 23. See also Brown, *supra* note 6; King, *supra* note 9.

45. See e.g., Brown, *supra* note 6, at 1250, 1274-81; Delgado, *supra* note 23, at 759-760.

46. See e.g., Nat'l Inst. of Justice, *supra* note 6 ("Since the primary obligation is to victims, a restorative justice process empowers victims to effectively participate in defining obligations.").

47. See e.g., Delgado, *supra* note 23, at 759-60.

48. *Id.*

49. *Id.* For a discussion of this issue of differing results and how that is part of restorative justice processes, see EDGAR, *supra* note 13, at 13 ("Built into the philosophy and practice of restorative justice is a principle that no two situations of harm arising between human beings are

accept the proposed settlement, is usually a return to criminal court, offenders lack bargaining power.<sup>50</sup> These potential disparities implicate fundamental questions of fairness.<sup>51</sup>

With respect to the risk of maintaining or exacerbating pre-existing prejudice, authors of a study of alternative dispute resolution ("ADR"), a rubric under which Classic RJ can be placed,<sup>52</sup> conclude that "ADR is no safe haven for the poor and powerless."<sup>53</sup> Based upon analyses from several perspectives, including sociopsychological and psychodynamic, the authors explain that "ADR increases the risk of prejudice toward vulnerable disputants. [The authors'] review of social science writings on prejudice reveals that the rules and structures of formal justice tend to suppress bias, whereas informality tends to increase it."<sup>54</sup> As a result, particular risks may inhere in Classic RJ applications to individuals who lack economic means and thus often to those historically subject to discrimination in our society.

With respect to the toll on the parties, victims may find themselves uncomfortable or ill-equipped to shoulder the responsibility of what may amount to passing sentence on the offender.<sup>55</sup> This is a responsibility for which we generally formally train judges. Judges, themselves, can often draw upon their previous experiences, as attorneys, observing, or advocating for sentences in criminal cases. Judges also commonly have some professional distance from the incident and the parties.

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identical. . . . No restorative conference will ever have exactly the same outcome as any other conference, because conferences (unlike courtrooms) honour the individuality and uniqueness of each participant.").

50. See Delgado, *supra* note 23, at 760; Brown, *supra* note 6, at 1250, 1269 ("Because offenders know that the outcome of VOM can affect their cases in court (satisfying the victim can help them, and failing to reach agreement can hurt them), they can feel coerced into agreeing to victims' demands. The very context of the mediation could thus create leverage that the victim might exploit against the offender."). Movement toward the more inclusive Classic RJ vehicle of restorative justice circles may help address some of these concerns. See E-mail from Professor Jennifer Gerarda Brown, *supra* note 13.

51. See Delgado, *supra* note 23, at 759-60.

52. Like mediation in other contexts, Classic RJ emphasizes a non-litigation resolution to the consequences of a harm.

53. Richard Delgado, Chris Dunn, Pamela Brown, Helena Lee, & David Hubbert, *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 WIS. L. REV. 1359, 1391.

54. *Id.* at 1400.

55. See Delgado, *supra* note 23, at 759-60.

Moreover, victims may not be ready to move to a phase of forgiveness at the time of the mediation.<sup>56</sup> The processing of the offense that has occurred prior to or that occurs as part of the mediation may be minimal in comparison to the damage caused or the processing needed for healing for the victim.<sup>57</sup> Similarly, the processing necessary for an offender to arrive at a stage of genuine recognition of personal responsibility may also be lacking.<sup>58</sup> Too little and too soon are important risks of Classic RJ practices.<sup>59</sup>

## II. Hybrid Restorative Justice

Having explored a classic approach to restorative justice and some of the benefits and limitations of that approach, I want to briefly examine the second paradigm described in this essay, Hybrid RJ. Hybrid RJ represents a developing conception of restorative justice that melds elements of Classic RJ, traditional criminal justice sentencing, and a substantial emphasis on rehabilitative programming. In contrast to Classic RJ, the hybrid model supplements, and surfaces apart from, the traditional criminal court sentencing. Participation in this type of restorative justice does not serve as a substitute for or part of an offender's court sentence.<sup>60</sup> This alchemy also contemplates a model with a substantial integration of educational and rehabilitative programming, programming which may not be required in a Classic RJ model.

Unlike many applications of the Classic RJ model that focus on juvenile and less serious adult offenses, the hybrid model commonly envisions and actively seeks participation by those offenders

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56. See Brown, *supra* note 6, at 1277-81.

57. *Id.*

58. *Id.* at 1250 ("VOM suppresses victims' outrage and loss by assuming that these negative feelings can be expressed and resolved in the course of a few hours spent meeting with the offender."). The author proposes a "decoupling of mediation from the criminal justice system: the success or failure of the mediation should have no impact on the offender's prosecution or punishment." *Id.* at 1251 (citations omitted). The hybrid restorative justice model discussed below may qualify as a "decoupled" approach and address a number of the concerns that prompt Professor Brown to advocate for the decoupling of VOM from the criminal justice process.

59. *Id.* at 1250.

60. Offenders may, through the conventional correctional processes, earn work time or good time credits toward their release dates by participating in work programs or behaving appropriately in Hybrid RJ programs, just as they would if they were not in a restorative justice program. See SUNNY SCHWARTZ & DAVID BOODELL, DREAMS FROM THE MONSTER FACTORY 145 (2009).

committing some of the most serious and violent offenses.<sup>61</sup> It can operate behind the barbed wire and locked gates of correctional facilities.

Consider the San Francisco Sheriff's Department Resolve to Stop the Violence Project ("RSVP"). Influenced by the work of Kay Pranis in Minnesota, Sunny Schwartz developed RSVP.<sup>62</sup> It offers a peer-based restorative justice rehabilitative program in which inmates confront themselves and engage in the process of learning to accept responsibility for their destructive behavior.<sup>63</sup> RSVP is a demanding inside-the-jail program that emphasizes education, counseling, victim impact, and accountability.<sup>64</sup>

As a speaker on a California Correctional Crisis Conference panel, Sunny Schwartz narrated the failure of the traditional California correctional facilities to help inmates break the cycle of crime. She explained:

We kept seeing the same people coming in over and over. Today, sadly, in 2009, I'm seeing the grandkids of the men and women I worked with in 1980 as a law student. So, we're talking third generation . . . . [More than once,] in one dormitory; there [has been] a father, a son, and grandson [housed there at the same time].<sup>65</sup>

Three generations of offenders in one jail is a snapshot of a correctional system that begs for change. In a survey of the inmate

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61. *Id.* (The inmates in the RSVP dorm "were sixty-two of the most violent prisoners in the San Francisco County jail system . . . ."); Bandy Lee & James Gilligan, *The Resolve to Stop the Violence Project: Transforming an In-House Culture of Violence Through a Jail-Based Programme*, 27 J. Pub. Health 149, 150 (2005) ("Since the institution of RSVP, a history of violence was intended as a criterion for assignment into the programme dorm, although a small number without a history of violence still came to be included.").

62. Sunny Schwartz describes the influence of Kay Pranis and her work with restorative justice in the Minnesota Correctional System on Sunny Schwartz and RSVP. *Id.* at 126. Like RSVP, a number of Kay Pranis' programs involve restorative justice programs in correctional facilities. See Kay Pranis, *The Minnesota Restorative Justice Initiative: A Model Experience* (Dec. 3, 2007), available at <http://www.ojp.usdoj.gov/nij/topics/courts/restorative-justice/perspectives/minnesota.htm>. For a book advocating the implementation or extension of restorative justice processes in prisons, see EDGAR, *supra* note 13; see also Ottmar Hagemann, *Restorative Justice in Prison*, 221, in *REPOSITIONING RESTORATIVE JUSTICE* (Lode Walgrave ed., Willan Publishing 2003).

63. SCHWARTZ, *supra* note 60, at 191.

64. See e.g., *Id.* at 137.

65. Sunny Schwartz, Presentation at the California Correctional Crisis Conference (Mar. 20, 2009).

population that Sunny Schwartz sought to serve, she learned that “[ninety percent] were self-identified addicts; [eighty percent] were self-identified victims of sexual or physical violence as a child; [seventy-five percent] were reading somewhere between the fourth- and sixth-grade levels; [ninety percent] never had a legal job.”<sup>66</sup> “If there was ever a set of numbers that spoke more plainly to the need for some alternative to warehousing people, I hadn’t seen it,” explained Ms. Schwartz.<sup>67</sup> Ms. Schwartz’s experience over decades in the San Francisco jails illustrated in microcosm the California correctional crisis writ large and prompted her search for an alternative. That alternative became the RSVP program.

The Hybrid RJ paradigm, which RSVP exemplifies, shares a number of fundamental principles with the classic approach. Applying the first Classic RJ principle of personal accountability, RSVP<sup>68</sup> works with the offender to help him understand and take responsibility for the harm he has caused and its consequences.<sup>69</sup> Under the second principle, it seeks to invoke empathy in the offender.<sup>70</sup> Victims and family members recount the harm done to them through in-person encounters with offenders.<sup>71</sup> In contrast to a common archetype of a Classic RJ model, however, the victims who speak, speak to groups of offenders and are unlikely to be the specific victim against whom the particular offender caused harm.<sup>72</sup> These victims are sometimes referred to as “surrogate victims.”<sup>73</sup>

Of course, this means that offenders don’t have to sit in a room and listen to persons to whom they personally caused harm actually describe the harm the offender inflicted. It offers the offender a level

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66. SCHWARTZ, *supra* note 60, at 94.

67. *Id.*

68. Sunny Schwarz implemented this program under the auspices of Sheriff Michael Hennessey. For a description of a number of restorative justice initiatives in custodial environments worldwide as of 1999, see MARIAN LIEBMANN & STEPHANIE BRAITHWAITE, *RESTORATIVE JUSTICE IN CUSTODIAL SETTINGS: REPORT FOR THE RESTORATIVE JUSTICE WORKING GROUP IN NORTHERN IRELAND* (1999), available at [http://www.restorativejustice.org.uk/About\\_RJ/pdf/Restorative%20justice%20in%20custodial%20settings\\_Marian%20Liebmann%20and%20Stephanie%20Braithwaite.pdf](http://www.restorativejustice.org.uk/About_RJ/pdf/Restorative%20justice%20in%20custodial%20settings_Marian%20Liebmann%20and%20Stephanie%20Braithwaite.pdf).

69. The RSVP dorm houses male inmates. See Lee, *supra* note 61, at 149.

70. SCHWARTZ, *supra* note 60, at 137-38.

71. *Id.* at 145-154.

72. *Id.*

73. See, e.g., Rayne Wolfe, *From Tragedy to Forgiveness, with a Stop at San Quentin*, PRESS DEMOCRAT, April 19, 2009, [www.pressdemocrat.com/article/20090419/ARTICLES/904199938](http://www.pressdemocrat.com/article/20090419/ARTICLES/904199938). See also Bell Gale Chevigny, *Prison Activists Come of Age*, NATION, July 24, 2000, available at [http://www.thirdworldtraveler.com/Prison\\_System/Prison\\_Activists.html](http://www.thirdworldtraveler.com/Prison_System/Prison_Activists.html).

of remove and the possibility of emotional distance. RSVP also does not require the offender to make restitution to the victim, beyond the standard restitution that may have been imposed with the official criminal sentence. In addition, victims of the harms these offenders personally caused do not necessarily receive an apology or see remorse expressed by the offenders through RSVP, as might be expected in a Classic RJ program. Hybrid RJ does not provide any direct healing through a gathering for the community members directly affected by each offender's harm.

The RSVP approach doesn't, however, preclude apologies or expressions of remorse to victims. Sometimes, surrogate victims are the recipients of apologies from the offenders as the indirect victims of the harms caused by the offenders.<sup>74</sup> But the program doesn't require a meeting with an offender and the identified victims of the offender's crime.

Another important feature distinguishes RSVP from Classic RJ in the U.S. Inmates in RSVP have not necessarily chosen to participate in RSVP. Although the RSVP dorm takes inmates who want programs, about half the inmates are randomly chosen.<sup>75</sup> Sunny Schwartz explains that inmates in RSVP are some of "the most violent prisoners in the San Francisco County jail system."<sup>76</sup> The incentive to receive a lesser sentence that may motivate offenders in Classic RJ or even an emphasis on less serious crimes does not dictate the population of the RSVP dorm. Even the usual self-selection of motivated offenders doesn't apply to half the dorm's population. Success here must depend on other factors, like the quality of the peer and rehabilitative programs, the educational focus, and reaching violent offenders emotionally to evoke empathy and accountability.

Could this Hybrid RJ serve the ends of helping abate the overcrowding and recidivism crisis? Would offenders be motivated to engage in the demanding twelve hours a day, six days a week program, one that includes extensive examining of their own

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74. In addition, RSVP itself does offer "practical and emotional support to the victims of the RSVP offender/participants." See E-mail from Sunny Schwartz, Program Administrator, S.F. Sheriff's Dep't, to Kate E. Bloch, Professor of Law, Univ. of Cal., Hastings College of the Law (Sept. 25, 2009) (on file with author).

75. SCHWARTZ, *supra* note 60, at 120.

76. *Id.* at 145. On the issue of history of violence as a criterion for RSVP participation, see Lee, *supra* note 61.



reflections in the looking glass<sup>77</sup> to understand their motivations and change their behavior?

Over the last decade, two studies specifically of RSVP have addressed this question of recidivism. Both were conducted by Dr. James Gilligan, then Director of the Center for the Study of Violence and psychiatrist at Harvard and his Harvard faculty colleague, Bandy Lee.

In the first, Dr. Gilligan and his colleague measured violent incidents within the jail, using the RSVP dorm and a control dorm. They reported:

During the year before RSVP began, there were 24 violent incidents serious enough to have constituted felonies had they occurred in the community (roughly three per month) in the 62-bed dorm. During the first month RSVP was in effect there was one such incident; and for the following 12 months, there were none. During that same year, the control dorm that still followed traditional jail practices had 28 violent incidents.<sup>78</sup>

In the second study, the researchers evaluated recidivism of inmates once they were outside the dorm in the community, after their participation in RSVP. They concluded:

Inmates who had participated in RSVP for at least 8 weeks had a rate of arrests for violent crimes per day in the community during their first year after release from jail that were 46.3% lower than those of the 101 members of the control group (p 0.05). For those in RSVP for 12 weeks or more, the violent crime rearrest rate was 53.1% lower (p 0.05); and those in for at least 16 weeks had a violent arrest rate 82.6% lower (p 0.05). In each of three pairs of group comparisons, the members of the experimental group who were rearrested spent significantly less time in custody, and significantly more days in the community before their first

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77. *Id.* at 137.

78. Lee, *supra* note 61.

arrest (for either a violent or nonviolent crime), than did those in the control group.<sup>79</sup>

Of course, RSVP is, in effect, a small pilot project, with an immensely dedicated staff and inspirational leadership. Whether results like those found by Dr. Gilligan for RSVP will be sustained by the RSVP program and can or will be replicated elsewhere deserves further study.<sup>80</sup>

Even with the impressive results of Dr. Gilligan's studies, the Hybrid RJ approach has limitations. As mentioned above, inmates are generally spared the face-to-face encounters with the victims of the harms the inmates personally caused. Inmates may be required, rather than requested, to participate in a hybrid program. Unlike Classic RJ, the hybrid program is not designed as an alternative to traditional court sentences and, consequently, is not designed to reduce the number of offenders sentenced to incarceration, once an offender has perpetrated a crime. Classic RJ, especially when it operates as a substitute sentencing process, generally emphasizes consequences distinct from incarceration. As a result, if sentencing in the traditional system for the same case would have involved a jail sentence, then Classic RJ may save those resources, at least in the instant case. Moreover, the rehabilitative programs, which are integral to the hybrid approach inside the jail, cost resources. Whether, or to what extent, the expenditure of the resources for the hybrid approach will save taxpayer money over time, by, for example, recidivism reductions, has yet to be fully ascertained.<sup>81</sup>

The Hybrid RJ approach, however, does avoid some of the criticisms launched at Classic RJ programs. For example, of the three criticisms above, 1) the risk of arbitrariness (lack of consistency and inequality of bargaining power), 2) the risk of maintaining or exacerbating prejudice, and 3) the risk of an

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79. SCHWARTZ, *supra* note 60, at 175-76 (quoting James Gilligan and Bandy Lee, *The Resolve to Stop the Violence Project: Reducing Violence Through a Jail-Based Initiative*, commissioned report, December 2000). See also James Gilligan and Bandy Lee, *The Resolve to Stop the Violence Project: Reducing Violence in the Community Through a Jail-Based Initiative*, 27 J. PUB. HEALTH 143 (2005).

80. A program, called RSVP East in Valhalla Jail in Westchester County, is apparently attempting to replicate the original RSVP program. E-mail from Sunny Schwartz, *supra* note 74. SCHWARTZ, *supra* note 60, at 195.

81. For a brief discussion of some costs and savings of the RSVP dorm, see Lee, *supra* note 61, at 154.

aggravated toll on victims and offenders, only the third is likely to apply to any substantially greater degree to the hybrid model than to a traditional criminal sentencing process.

With respect to arbitrariness, because sentence is pronounced in the formal and traditional criminal justice system without reference to the hybrid model, the usual safeguards with respect to consistency of sentences, whether perceived as effective or not, remain. Similarly, because the restorative justice component is not part of the formal sentencing, offenders do not give up their bargaining power to force the prosecution to prove its case in a formal trial proceeding. Offenders do not trade the possibility of a lighter sentence for a potential disparity in their sentences as compared with other offenders similarly situated. Offenders do not give up the procedural protections available through formal sentencing in the traditional system.<sup>82</sup>

Additionally, with respect to the risk of maintaining or exacerbating prejudice, the formality of the traditional court sentencing provides the usual, albeit sometimes limited, constraints against prejudicial enforcement of the law. Finally, with respect to toll on the parties, there is no greater demand for participation by the victim or the offender in the formal court sentencing process since the hybrid model operates without a bearing on the formal sentencing by the court.

In each of these ways, with Hybrid RJ separate from formal adjudication, the offender who participates in the hybrid model retains the protections (and suffers many of the limitations) of the traditional sentencing process.<sup>83</sup>

Two differences, however, may change the toll on the victim and on the offender. One is the victim's choice to participate as a "surrogate victim" or representative of victims in the jail meetings

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82. For those participants who have not been convicted of the offense, and perhaps even if they have, however, self-incrimination concerns may remain. To address these, RSVP arranged with the district attorney that his office would not use the "men's disclosure(s) and accountability for prosecution purpose(s)." E-mail from Sunny Schwartz, *supra* note 74. Sunny Schwartz also reported that the district attorney "made good on his word." *Id.* In addition, "attorneys have routinely advised their clients not to disclose anything re[garding] a current charge they face — we agree and support this also — this doesn't compromise the process as the men in our program have thick rap sheets of prior convictions/behavior that they can use to disclose their violence and thus work hard on their issues — in other words the current case they face is never the first violent act alleged." *Id.* But see Lee, *supra* note 61, at 150.

83. For a discussion of possible self-incrimination issues, however, see *supra* note 82.

with offenders. But such a choice is entirely within the discretion of the victim. An offender's sentence does not depend upon whether the victim of that offender's conduct chooses to meet with offenders. Presumably, victims will choose to participate only if and when they feel ready to engage in such a demanding encounter. Moreover, in the hybrid model, victims, when serving as surrogate victims, do not necessarily, and perhaps rarely, meet with the actual perpetrators of the harm against them.<sup>84</sup> For the offender, in many ways, meeting with a surrogate victim, rather than the actual victim against whom the offender perpetrated harm, is also likely to reduce the toll on the offender.

The second difference between the Classic RJ and Hybrid RJ approaches, the mandatory nature of participation, is of particular significance. In Classic RJ in the U.S., although the possibility of a more lenient response by participating or the fear of a harsher one for failure to participate<sup>85</sup> is an incentive for offenders to elect a restorative justice process, there is generally no official mandate that offenders participate in the restorative justice option.<sup>86</sup> They can usually elect the traditional sentencing system. In fact, this self-selection bias is a major factor complicating empirical studies of the effectiveness of restorative justice.<sup>87</sup> In Hybrid RJ, in contrast, offenders may be randomly selected for the program, whether or not they want to participate.<sup>88</sup> In this way, if an offender is randomly chosen and selected against his/her preference, the toll on that offender may be much higher than in the traditional criminal justice sentencing process or Classic RJ model.

With these notable exceptions, the three criticisms launched above against Classic RJ do not effectively apply to the hybrid model. Moreover, the hybrid model, at least currently, is directed toward and designed for some of the most challenging correctional populations, those who have perpetrated serious and violent crimes.<sup>89</sup> In addition, unlike in Classic RJ, in Hybrid RJ, retribution,

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84. Victims may choose to participate in programs that offer personal meetings with the actual offender who caused those victims' harm. See, e.g., *infra* note 97 and accompanying text.

85. See Brown, *supra* note 6, at 1249-50, 1269.

86. *Id.* But suggesting that in some circumstances an offender might participate "pursuant to a court order." *Id.* at 1267. See also Delgado, *supra* note 23, at 760.

87. See Latimer, *supra* note 37, at 138-39.

88. SCHWARTZ, *supra* note 60, at 120.

89. *Id.* at 145.

incapacitation, and general deterrence theories, through the traditional sentencing process, may continue to play a significant role.<sup>90</sup>

For its restorative justice component, Hybrid RJ draws from the same well of fundamental principles as Classic RJ. But, Hybrid RJ comes to the well and draws differently than does Classic RJ. In Classic RJ, the main focus is on restoring the victim. By drawing without influence on the formal adjudication process, Hybrid RJ may supply less or no restoration from the offender to the specific victim of the offender's harm. As discussed below,<sup>91</sup> there are components of Hybrid RJ that can provide direct reconciliation services for face-to-face meetings between offenders and the actual victims of the harms perpetrated by those offenders. In those meetings, greater restoration may take place. Moreover, RSVP itself does offer "practical and emotional support to the victims of the RSVP offender/participants."<sup>92</sup> But, Hybrid RJ can also proceed without the kind of focus that a Classic RJ program has on restoration for the victim of each offender's actual crime. With respect to restorative justice goals, in this important way, in particular, Hybrid RJ may differ from Classic RJ.

Hybrid RJ in the U.S., under the direction of Kay Pranis, found its way into correctional institutions in Minnesota more than a decade ago<sup>93</sup> and, through RSVP, into the San Francisco jail by the 1990s.<sup>94</sup> It has been finding its way into the correctional fabric of other institutions in California as well.<sup>95</sup> For example, San Quentin

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90. There may, of course, be restorative justice programs associated with the criminal justice system that defy placement in one model or the other, offering variations on both the Classic RJ and Hybrid RJ models. Moreover, there are restorative justice approaches being applied in contexts unrelated to formal criminal proceedings. For a discussion of the search for "restorative dialogue opportunities" for family members of homicide victims worldwide, see Umbreit, *supra* note 5, at 513.

91. See e.g., *infra* note 97 and accompanying text.

92. E-mail from Sunny Schwartz, *supra* note 74.

93. See Kay Pranis, *The Minnesota Restorative Justice Initiative: A Model Experience*, CRIME VICTIMS REPORT, May/June 1997, available at <http://www.ojp.usdoj.gov/nij/topics/courts/restorative-justice/perspectives/minnesota.htm>; Kay Pranis, who is "the former Restorative Justice Planner for the Minnesota Department of Corrections, has worked in restorative justice since 1988." Kay Pranis, *Healing and Accountability in the Criminal Justice System: Applying Restorative Justice Processes in the Workplace*, 8 CARDOZO J. CONFLICT RESOL. 659 (2007).

94. SCHWARTZ, *supra* note 60.

95. Jenifer Warren, *A Journey Toward Healing*, L.A. TIMES, Oct. 1, 2005, available at <http://www.latimes.com/news/local/la-100105justice,1,7488292.story?page=1&cset=true&ctrack=1&coll=la-headlines-california> (describing participation of victim's family and offenders in restorative justice program at San Quentin). See also Nat'l Inst. of Justice, U.S. Dep't of Justice,

has a pilot program, which, like the RSVP model, involves substantial investment by offenders in the application of restorative justice principles.<sup>96</sup>

In addition to San Quentin's pilot Victim-Offender Education Group, with surrogate victims, California also offers a Victim-Offender Dialogue Program.<sup>97</sup> Through this program, victims meet with the offenders who personally caused the victims' harm. But, like other Hybrid RJ approaches, the meeting is not part of the formal sentencing of the offender. Instead, the meeting occurs during the offender's incarceration before the offender's release date.<sup>98</sup> This program complements the work in programs like RSVP, which prepares offenders to re-enter the world outside. It offers offenders a personal opportunity to understand the specific harms they caused, to begin to redress those harms, to take personal responsibility, and hear and understand the victim's perspective. It offers victims the chance to look the offender in the eye, to share their perspective on the harm, to see if the offender takes responsibility and undertakes to make amends. Finally, it offers victims a chance, if they seek one, to forgive.

## Conclusion

Through both the Classic RJ and the Hybrid RJ models, California has an opportunity to rethink its sentencing practices. These models seek to illumine and address more broadly the human impact of crime and offer more contextual approaches to sentencing.

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Victim Impact Class (Dec. 5, 2007), <http://www.ojp.usdoj.gov/nij/topics/courts/restorative-justice/promising-practices/victim-impact-class.htm> (describing a 1986 Impact of Crime on Victims program through the California Youth Authority).

96. See Insight Prison Project, <http://insightprisonproject.org/programs/?id=12> (last visited Nov. 13, 2009); Warren, *supra* note 95; Reentry Policy Council, Victim Notification Process, [http://reentrypolicy.org/program\\_examples/victim\\_notification\\_process](http://reentrypolicy.org/program_examples/victim_notification_process) (last visited October 30, 2009). At San Quentin, like the RSVP program, inmates invest substantial time in the intensive restorative justice experience. See Warren, *supra* note 95. Other variations on this model include victim impact classes, where victims, generally surrogate victims, educate offenders about the personal consequences of crime. For a description of victim impact classes, see Nat'l Inst. of Justice, *supra* note 95. These classes may operate within custodial institutions, but also as part of diversion or other programs. *Id.*

97. Reentry Policy Council, *supra* note 96 ("The OVSR train staff and selected volunteers to act as mediators during one-on-one meetings within the correctional facility between the victim of a violent crime and the individual who committed the offense. These meetings take place prior to the inmate's release date.").

98. *Id.*

Research suggests that these approaches can, at least in some circumstances, reduce recidivism and leave those involved with a greater sense of satisfaction with the justice process. They offer hope of reducing recidivism and overcrowding, as well as improving the outcomes for victims and offenders, and consequently enhancing public safety.

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